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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

FRANCISCO GONZALEZ, JR.,

Plaintiff and Appellant,

v.

LUCKY SEVEN DRAGONS, INC.,

Defendant and Respondent.

B289269, consolidated
with B291629

Los Angeles County
Super. Ct. No. BS170456

APPEAL from a judgment and postjudgment order
of the Superior Court of Los Angeles County, Edward B.
Moreton, Jr., Judge. Affirmed.

Francisco Gonzalez, Jr., in pro. per., for Plaintiff
and Appellant.

No Appearance for Defendant and Respondent.

INTRODUCTION

After receiving an adverse decision from the California Labor Commissioner on his complaint for unpaid wages, self-represented plaintiff and appellant Francisco Gonzalez, Jr., appealed to the superior court under Labor Code section 98.2, subdivision (a).¹ After a trial de novo, the superior court also ruled against him and awarded statutory attorney fees to Gonzalez's former employer, Lucky Seven Dragons, Inc. (Lucky Seven). Gonzalez separately appealed from the judgment following the bench trial and from the order awarding attorney fees to Lucky Seven. We consolidated the appeals for argument and decision and affirm.

FACTS AND PROCEDURAL BACKGROUND

Gonzalez's opening brief describes the allegations supporting his wage and hour claims but does not cite to the record to support them. Nor does the record contain any documents describing Gonzalez's claims.² We briefly summarize Gonzalez's allegations as stated in his brief.

¹ All statutory references are to the Labor Code unless noted otherwise.

² The only documents in the record relating to Gonzalez's claims are the trial court's March 21, 2018 minute order finding in favor of Lucky Seven; Gonzalez's notice of appeal from that judgment, filed April 4, 2018; the order after trial on appeal and judgment signed by the court and filed on April 5, 2018; and the notice of entry of judgment, filed April 17, 2018. No reporter was present at the one-day court trial. Although Gonzalez filed an opening brief and a request for production of employee records with the trial court, he did not designate them for inclusion in the clerk's transcript. Lucky Seven designated its trial exhibits admitted into evidence for inclusion in the clerk's transcript,

Gonzalez alleges Lucky Seven, doing business as Protective Shield Security Services, hired him in October 2015 as an armed security officer at a pay rate of \$12 per hour. He was assigned to work at a medical marijuana dispensary called “Highest” (shop) from 3:00 p.m. to 8:30 p.m. He worked alone in the shop’s lobby area. Gonzalez alleges he was not paid for all of the hours he worked over a three-month period until the shop was shut down. Gonzalez quit on January 7, 2016, and said Lucky Seven owed him for 167.15 hours of unpaid work.

Gonzalez then filed a claim with the Labor Commissioner’s Office on February 11, 2016. He alleged Lucky Seven owed him \$1,958.04 in unpaid wages from November 18, 2015 through December 31, 2015. He also sought liquidated damages and penalties under sections 1194.2 and 203, respectively, and interest. In total, he requested \$8,307.60. The hearing officer found in favor of Lucky Seven.

Gonzalez filed an appeal from the Labor Commissioner’s decision with the superior court. The court held a de novo court trial on Gonzalez’s claims on March 21, 2018. Both Gonzalez and Lucky Seven gave opening statements. Gonzalez testified on his own behalf. The court’s minute order states Lucky Seven’s exhibits 501 through 509 were “marked for identification and admitted into evidence by reference only.”³ The order does not show that Gonzales presented exhibits. After he rested, Lucky Seven did not introduce any additional evidence. The parties

but they were not included. Gonzalez did not ask the clerk to include them.

³ Those exhibits included paychecks and pay period schedules, “screenshots,” Gonzalez’s personnel file, and the Labor Commissioner’s decision.

then argued. The court ruled, “The Court finds in favor of the Defendant. Plaintiff to take nothing. Defense counsel is ordered to submit a proposed order.”

The order defense counsel prepared, and the court signed, states, “The Court heard [Gonzalez’s] claims, allowed for cross-examination of [Gonzalez], admitted Exhibits and made the following Orders: [¶] 1. Judgment for [Lucky Seven]. [Gonzalez] to take nothing (\$0.00). [¶] 2. The Court found that [Gonzalez] presented no evidence of hours worked; no evidence of money paid other than the money paid by [Lucky Seven]; and that there was no testimony to make any finding for work done that should have been paid for. [¶] 3. [Lucky Seven] to submit proposed Order.”

Lucky Seven then moved for \$6,987.50 in attorney fees under section 98.2, subdivision (c), on March 28, 2018. On April 3, 2018, it filed a memorandum of costs asking for \$6,845.50 in attorney fees plus various costs, for a total of \$7,422.50. Gonzalez did not file an opposition but appeared at the July 19, 2018 hearing on Lucky Seven’s attorney fee motion. No reporter was present at the hearing. The court granted the motion and awarded Lucky Seven \$6,987.50 in attorney fees and costs.

Gonzalez filed a notice of appeal from the judgment after the court trial on April 4, 2018 (case no. B289269).⁴ He filed a

⁴ The court did not enter its order after trial on appeal and judgment until April 5, 2018, and Lucky Seven did not serve notice of entry of the judgment until April 16, 2018. We treat Gonzalez’s premature notice of appeal as filed immediately after entry of judgment. (Cal. Rules of Court, rule 8.104(a)(1)(B) & (d).)

second notice of appeal from the order awarding attorney fees on July 24, 2018 (case no. B291629).⁵

Gonzalez moved to lodge with this court the exhibits that he purportedly attempted to introduce at trial. We denied that motion, finding Gonzalez failed to show he had proffered the exhibits at trial and that the trial court had excluded them.

Lucky Seven did not respond to Gonzalez's appeals.

DISCUSSION

1. *General appellate principles*

While we are mindful Gonzalez is representing himself on appeal, he “is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys.” (*Barton v. New United Motor Manufacturing, Inc.* (1996) 43 Cal.App.4th 1200, 1210.) Thus, he is bound to follow the most fundamental rule of appellate review: the judgment or order challenged on appeal is presumed to be correct, and “it is the appellant’s burden to affirmatively demonstrate error.” (*People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573.) “‘All intendments and presumptions are indulged to support [the judgment or order] on matters as to which the record is silent, and error must be affirmatively shown.’” (*Denham v. Superior Court of Los Angeles County* (1970) 2 Cal.3d 557, 564.) To overcome this presumption, an appellant must provide a record that allows for meaningful review of the challenged order. (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187.) If the record does not include all of the evidence and materials the trial court relied on

⁵ The order granting attorney fees was filed on July 19, 2018, and Lucky Seven served notice of entry of the order that same day.

in making its determination, we will not find error. (*Haywood v. Superior Court* (2000) 77 Cal.App.4th 949, 955.)

Further, “an appellant must present argument and authorities on each point to which error is asserted or else the issue is waived.” (*Kurini v. Hanna & Morton* (1997) 55 Cal.App.4th 853, 867.) Matters not properly raised or that lack adequate legal discussion will be deemed forfeited. (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655-656.) In short, an appellant must demonstrate prejudicial or reversible error based on sufficient legal argument supported by citation to an adequate record. (*Yield Dynamics, Inc. v. TEA Systems Corp.* (2007) 154 Cal.App.4th 547, 556-557.)

2. *Judgment in favor of Lucky Seven*

“[I]f an employer fails to pay wages in the amount, time, or manner required by contract or statute, the employee may seek administrative relief by filing a wage claim with the [labor] commissioner.” (*Post v. Palo/Haklar & Associates* (2000) 23 Cal.4th 942, 946.) After the commissioner issues a ruling, the parties may seek review by filing an appeal to the superior court, which hears the matter de novo, granting no weight to the commissioner’s decision. (*Id.* at pp. 947-948; § 98.2, subd. (a).) “The decision of the trial court, after de novo hearing, is subject to a conventional appeal to an appropriate appellate court. [Citation.] Review is of the facts presented to the trial court, which may include entirely new evidence.” (*Post*, at p. 948.) We review the trial court’s findings of fact on an appeal from a section 98.2 de novo hearing for substantial evidence. (*Nordquist v. McGraw-Hill Broadcasting Co.* (1995) 32 Cal.App.4th 555, 560-561.) Thus, our power “ ‘ ‘ ‘ begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, to support the findings below.’ ’ ” (*Lenk v. Total-Western, Inc.* (2001) 89 Cal.App.4th 959, 968.) We “ ‘ ‘ ‘ view the

evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor.” ’ ’ (Ibid.)

Gonzalez contends Lucky Seven calculated his pay incorrectly, failed to itemize his paychecks properly, and failed to withhold state and federal taxes from his pay, in violation of various provisions of section 226. In support of his contentions, Gonzalez cites only to Lucky Seven’s trial exhibits generally and to his exhibits that the trial court purportedly rejected. He contends his exhibits would have demonstrated Lucky Seven knowingly and intentionally violated the Labor Code. As we have said, Lucky Seven’s trial exhibits are not part of the clerk’s transcript. We also denied Gonzalez’s motion to lodge his purported trial exhibits for inclusion in the clerk’s transcript. Thus, we do not consider them.

Gonzalez has failed to meet his burden to establish error. We have only the court’s minute order and judgment to consider. The court found Gonzalez presented no evidence of the hours he worked and there was “no testimony to make any finding for work done” for which Lucky Seven should have paid him. These records do not show the absence of any evidentiary basis for the court’s findings or implied credibility determinations. Nor do they demonstrate any legal error by the court. Without a reporter’s transcript or any of the evidence presented at trial—or even Gonzalez’s complaint—we must presume substantial evidence supports the court’s ruling. (*Estate of Fain* (1999) 75 Cal.App.4th 973, 992 [“Where no reporter’s transcript has been provided and no error is apparent on the face of the existing appellate record, the judgment must be *conclusively presumed correct* as to *all evidentiary matters*.”].)

We therefore affirm the judgment, given that Gonzalez has not carried his burden of demonstrating either prejudicial error or the absence of evidentiary support for the court's decision.

3. *Attorney fees*

Gonzalez also appeals from the court's award of attorney fees and costs to Lucky Seven. Section 98.2, subdivision (c) provides, "If the party seeking review by filing an appeal to the superior court is unsuccessful in the appeal, the court shall determine the costs and reasonable attorney's fees incurred by the other parties to the appeal, and assess that amount as a cost upon the party filing the appeal. An employee is successful if the court awards an amount greater than zero." Unlike other fee-shifting statutes, section 98.2 is not designed to reward the prevailing party, but " 'to discourage meritless and unwarranted appeals by assessing costs and attorneys' fees against unsuccessful appellants.' " (*Lolley v. Campbell* (2002) 28 Cal.4th 367, 375-376.) We generally review an order granting an award of attorney fees for abuse of discretion. (*Carpenter & Zuckerman, LLP v. Cohen* (2011) 195 Cal.App.4th 373, 378.)

There was no abuse of discretion here. The court awarded Gonzalez nothing. He therefore was unsuccessful in his appeal to the superior court, and the court was required to assess as a cost against Gonzalez a reasonable amount of attorney fees incurred by Lucky Seven. Notwithstanding Gonzalez's failure to provide an adequate record on appeal, the record that exists provides substantial evidence to support the court's order. Lucky Seven supported its attorney fee motion with evidence establishing the reasonableness of the hours claimed and the attorney's hourly rate, as follows:

Lucky Seven's counsel declared he has practiced law since 2005 and regularly bills at \$375 per hour. He declared he spent 17.8 hours on Gonzalez's appeal to the superior court, totaling

\$6,675. He bills paralegal time at \$155 per hour and used 1.1 hours of paralegal time totaling \$170.50. Lucky Seven's attorney also incurred costs of \$142 for postage, parking, trial binders, and the fee for filing the attorney fee motion. Those fees and costs total \$6,987.50, which is what the court awarded. Lucky Seven's attorney's timesheet attached to his declaration shows the amount of time he spent on the matter each day and the tasks he performed. It also shows the amount of time his paralegal spent and the tasks performed, as well as the details for the requested \$142 in costs.

On this record, we cannot say the time spent and amounts charged were unreasonable, especially as Gonzalez did not file an opposition disputing the reasonableness of the fees. And, as there is no reporter's transcript, we presume any argument made at the hearing supports the court's order. Accordingly, we conclude substantial evidence supports the court's award of attorney fees and costs in the amount of \$6,987.50.

Gonzalez does not seem to challenge the reasonableness of the fee award on appeal in any event. Rather, Gonzalez argues the court deprived him of due process by not admitting evidence of the appellate court case information for his appeal from the judgment, case no. B289269, at the hearing. He argues "[t]his evidence would have demonstrated unlawful and egregious conduct of" Lucky Seven. The court was not required to permit Gonzalez—who failed to file an opposition to the motion for attorney fees—to introduce any evidence at the hearing. In any event, the case information on Gonzalez's appeal from the judgment does not demonstrate the court erred in awarding attorney fees under section 98.2, nor did Gonzalez's filing of an appeal preclude the court from granting Lucky Seven's motion. (*Bankes v. Lucas* (1992) 9 Cal.App.4th 365, 369 ["filing of a notice of appeal does not stay any proceedings to determine the matter

of costs and does not prevent the trial court from determining a proper award of attorney fees claimed as costs”].)

Gonzalez also argues the award was procedurally improper. He contends Lucky Seven failed to comply with California Rules of Court, rule 3.1702. Rule 3.1702(b) requires a motion for attorney fees to be served and filed within the time to file an appeal. An appeal must be filed within 60 days, or 30 days in limited civil cases, from service of notice of entry of judgment. (Cal. Rules of Court, rules 8.104(a)(1)(B), 8.822(a)(1)(B).)

Lucky Seven served its motion for attorney fees on the day the court issued its ruling, March 21, 2018, and filed it on March 28, 2018. The trial court entered its judgment on April 5, 2018, and Lucky Seven served and filed notice of entry of judgment on April 16 and 17, 2018. Thus, it filed its motion before the time to appeal had begun, much less before the time had expired.

Gonzalez seems to contend Lucky Seven also asked for attorney fees improperly by seeking them by motion and including them in its memorandum of costs. But, a prevailing party who claims costs must file a memorandum of costs within 15 days of service of written notice of entry of judgment. (Cal. Rules of Court, rule 3.1700(a)(1).) Lucky Seven timely filed its memorandum of costs on April 3, 2018. Code of Civil Procedure section 1033.5, subdivision (c)(5)(A), in turn, provides that attorney fees authorized by statute are a component of costs and “may be fixed” on noticed motion. As we noted, Lucky Seven timely filed a motion for attorney fees. Lucky Seven’s memorandum of costs also states that it filed a motion for

attorney fees. Accordingly, Lucky Seven's filing of both a motion for attorney fees and a memorandum of costs was not improper.⁶

Gonzalez thus has failed to demonstrate the court erred in awarding attorney fees to Lucky Seven.

DISPOSITION

The judgment is affirmed. Because respondent did not participate in the appeal, no costs are awarded to it.

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EGERTON, J.

We concur:

EDMON, P.J.

DHANIDINA, J.

⁶ For clarity, we note the \$6,987.50 in attorney fees and costs awarded by the court includes three separately listed items in the memorandum of costs: 1) \$6,845.50 in attorney fees for attorney and paralegal time listed under section 10; 2) the \$60 fee for the motion for attorney fees listed under section 1(b); and 3) \$82 in other costs listed under section 16. Thus, the court should not simply substitute the \$6,987.50 award for the \$6,845.50 in attorney fees requested in the memorandum of costs or a double recovery of \$142 will result.